

## **APPENDIX F**

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## **SCOPING REPORT**

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**Draft Environmental Impact Statement  
Allocation of Water Supply and  
Long-Term Contract Execution  
Central Arizona Project**

# ***SCOPING REPORT***



**Allocation of Water Supply and  
Expected Long-Term Contract Execution  
Central Arizona Project  
NEPA Process**



**Department of the Interior  
Bureau of Reclamation  
Lower Colorado Region  
Phoenix Area Office**

**NOVEMBER 1999**

# **SCOPING REPORT**

## **Allocation of Water Supply and Expected Long-Term Contract Execution Central Arizona Project NEPA Process**

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## **SCOPING REPORT**

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ALLOCATION OF WATER SUPPLY AND EXPECTED LONG-TERM CONTRACT EXECUTION  
CENTRAL ARIZONA PROJECT NEPA PROCESS

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## SCOPING PROCESS

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This scoping report has been prepared to provide a synopsis of the scoping process that has been conducted to date for the proposed allocation of Central Arizona Project (CAP) water and expected long-term contract execution. It will identify efforts made to notify interested agencies, organizations, and individuals about the proposed Federal action and to obtain input from those entities regarding the range of alternatives to be evaluated and the issues to be addressed in an environmental impact statement (EIS) being prepared by the United States Department of the Interior, Bureau of Reclamation (Reclamation). These efforts have been carried out pursuant to the “scoping process,” as defined by the Council on Environmental Quality’s (CEQ) regulations implementing the National Environmental Policy Act (NEPA).

The report summarizes the major points made in public comments received during the initial scoping process, both verbally at public scoping meetings held by Reclamation and in writing in response forms and/or letters written to Reclamation.<sup>1</sup> Reclamation has carefully considered each comment received; however, it is beyond the scope of this report to provide specific responses to all comments received.

This report identifies how Reclamation has revised or further developed alternatives to address concerns and issues brought up during the scoping process. The report also indicates how or whether impacts, identified during the scoping process, will be analyzed as part of the NEPA process and included in the EIS. The report also briefly addresses comments that were considered to be beyond the scope of, or not applicable to, this proposed action.

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<sup>1</sup> All public comments received pursuant to the scoping process are available for public viewing between the hours of 8:00 a.m. and 4:00 p.m. at Reclamation’s Phoenix Area Office, 2222 West Dunlap Avenue, Suite 100, Phoenix, and Tucson Field Office, 300 W. Congress Street, FB-37, Room 1L, Tucson, Arizona. Please contact Ms. Janice Kjesbo at (602) 216-3864 (Phoenix) or Mr. Eric Holler at (520) 670-4825 (Tucson) to arrange an appointment to view the documents.

## Purpose of the Report

Consistent with implementation of NEPA, Reclamation is preparing an EIS related to the proposed modifications to previous CAP water allocation decisions. The purpose and need of the Federal action is to allocate CAP water:

- pursuant to the Colorado River Basin Project Act of 1968; and
- in a manner that will facilitate the resolution of outstanding Indian water rights claims in the State of Arizona.

Reclamation has been negotiating a comprehensive settlement regarding operation of the CAP and water rights settlement negotiations. These negotiations have been conducted with representatives of the Central Arizona Water Conservation District (CAWCD), several Indian Tribes, Arizona Department of Water Resources (ADWR), non-Indian agricultural districts, and several municipalities. In the hope that a settlement is reached on a number of these issues, the proposed action in the EIS will be a reallocation of CAP water consistent with terms of the negotiated settlements currently under discussion with CAWCD and the Gila River Indian Community (GRIC). Environmental analysis of the proposed reallocation does not preclude additional adjustments to reallocations subject to the ongoing negotiations. Reclamation will analyze any adjustments as part of the NEPA compliance process as appropriate. In addition, Reclamation will analyze a range of potential alternative allocations of available CAP water consistent with the purpose and need of the Federal action, in the event a negotiated settlement is not forthcoming.

It is anticipated that at the conclusion of the NEPA process, the Secretary of the Interior (Secretary) will prepare a record of decision, and offer and execute contracts pursuant to that decision.

## CAP Allocation Background

The CAP was authorized as part of the Colorado River Basin Project Act of 1968 (Public Law 90-537). The CAP's principal purposes are to furnish water for irrigation and municipal and industrial (M&I) uses in central and

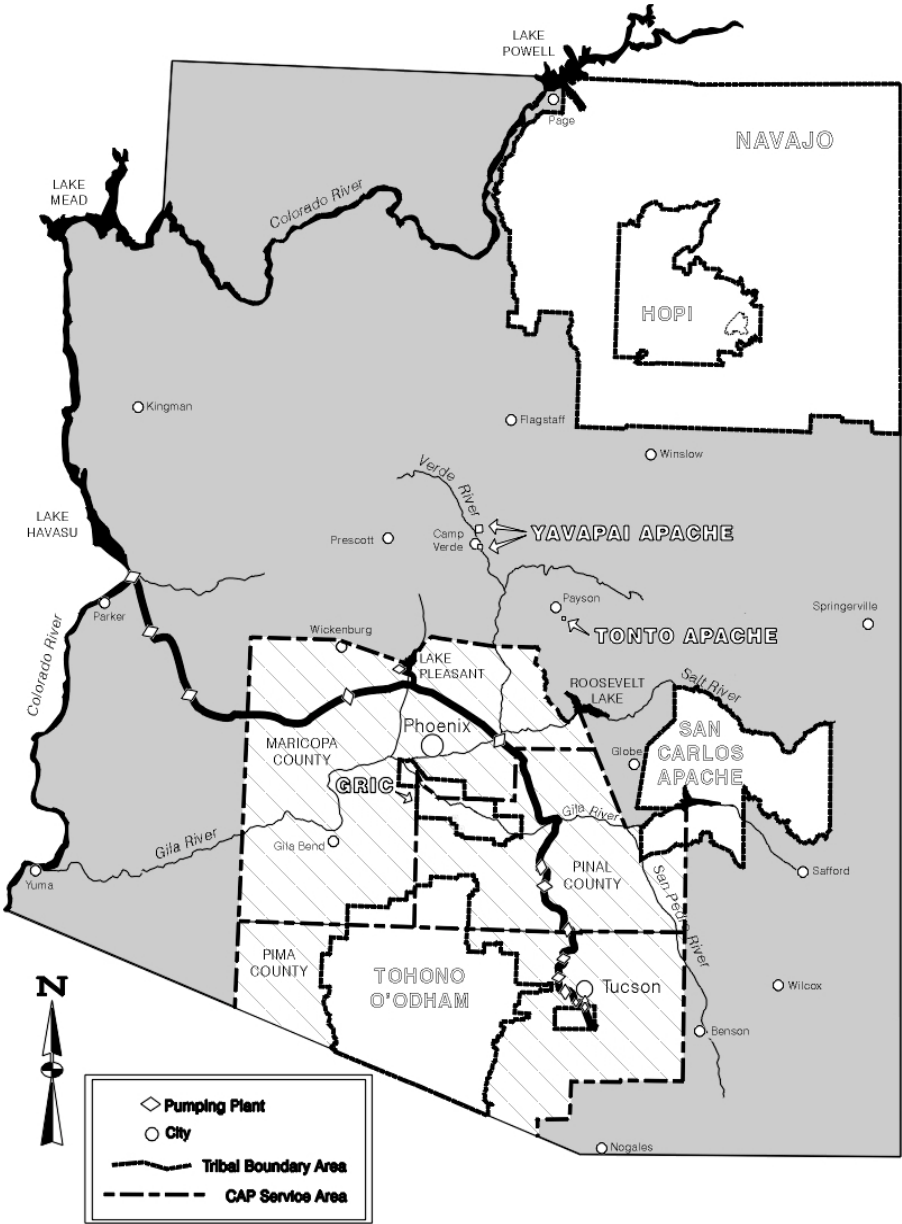


southern Arizona and western New Mexico through the importation of Colorado River water and the conservation of local groundwater. The CAP delivers Colorado River water to Arizona water users through a system of pumping plants, aqueducts, dams and reservoirs. The CAP aqueduct system is operated and maintained by CAWCD under an agreement with Reclamation. The CAP service area and Indian lands addressed in the EIS are shown in Figure 1.

In 1983, Reclamation prepared an EIS to address the potential impacts associated with the allocation of CAP water to M&I water users, non-Indian agricultural (NIA) users, and Indian Tribes. The Secretary published the final decision in the Federal Register on March 24, 1983 (48 FR 12446). In that notice, the Secretary allocated 638,823 acre-feet per year (af per year) of CAP water to M&I users and 309,828 af per year to Indian users. The remaining CAP water was allocated to 23 NIA water users as a percentage of the remaining CAP water supply. The percentages were based upon CAP-eligible acres of the NIA users and adjusted to reflect any surface water supplies available to the users.

Since the 1983 allocation decision, several actions have been taken that changed the amounts allocated to both the M&I and Indian water use categories and the remaining NIA users. The amount of water allocated for Tribal use has increased due to several Indian water rights settlement acts and agreements. As a result, CAP water allocated for use by Indians is currently 453,224 af per year, and the amount of CAP water for M&I entities is 620,678 af per year.

As mentioned earlier, percentages allocated for use within the NIA water category are based upon the amount of the CAP water supply that remains after water orders from the other two categories have been satisfied. Calculations of the corresponding amounts of water available to the contractors within the NIA category, in terms of exact amounts in af per year, vary among the settlement parties. These variations are due to different assumptions used and the order of the calculations made. For purposes of quantifying the environmental consequences of the proposed action and the alternatives, we have assumed the total amount of CAP water available in a normal year, for diversion and use after deducting for estimated



CENTRAL ARIZONA PROJECT

Figure 1

system losses, is 1,415,000 af per year.<sup>2</sup> This is an amount the various settlement parties have agreed upon for negotiation purposes. Therefore, for NEPA-related purposes, the amount of water currently available for NIA use is estimated to be 341,098 af per year (1,415,000 af per year less the sum of 620,678 acre-feet plus 453,224 af per year). Figure 2 provides additional detail regarding the changes that have occurred since the Secretary's original 1983 allocation.

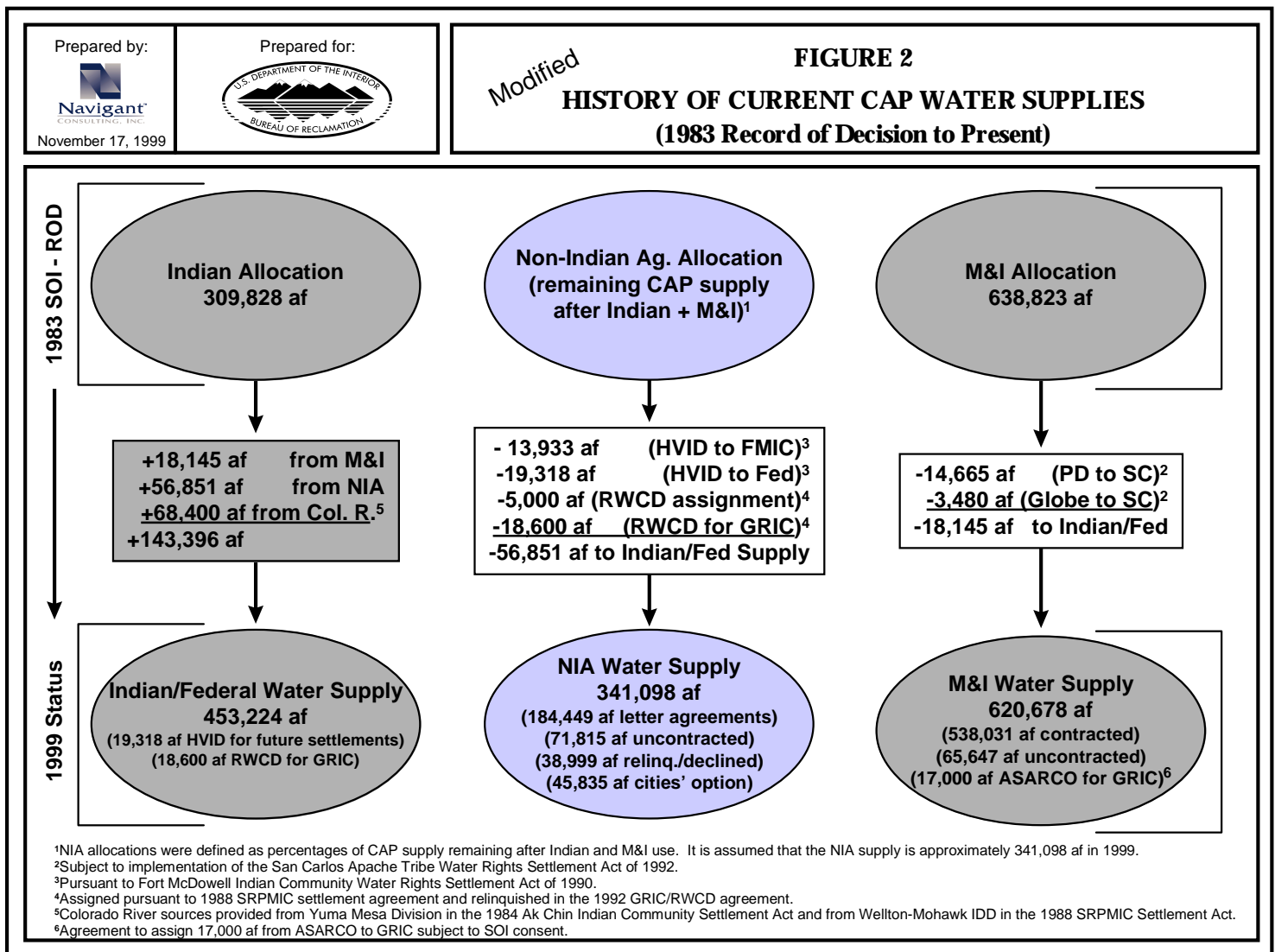
## **National Environmental Policy Act and Other Applicable Laws and Statutes**

NEPA establishes a general framework for evaluating environmental impacts prior to undertaking a Federal action. The Act requires public disclosure about the environmental impacts of, and alternatives to, discretionary major Federal actions significantly affecting the environment. Scoping is one of the first steps in the process, followed by issuance of a draft EIS and a 45-day minimum public review and comment period, including holding public hearings. All public comments are considered prior to issuance of a final EIS, which may be revised in response to those comments. A record of decision regarding the action cannot be made for at least 30 days after the issuance of the final EIS. Reclamation is the lead Federal agency for the CAP water reallocation EIS and will make the decisions regarding the project, pursuant to direction by the Secretary.

The allocation, diversion, and use of Colorado River water is governed by a series of laws, agreements, and court decisions, collectively termed the Law of the River. A review of the entire body of law is beyond the scope of this report. The allocation and use of CAP water must be consistent with the following laws:

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<sup>2</sup>Use of specific numbers in this scoping report, and the EIS itself, is not meant to imply a degree of precision that does not exist, and it should be noted that the various amounts of water attributed to the NIA category are estimates for purposes of describing alternative reallocation scenarios. Amounts that include water from the NIA category should be considered as being an "estimate," with the exception of the 33,251 acre-foot amount of NIA water previously allocated for use by Harquahala Valley Irrigation District (HVID), which was converted to Indian priority water and identified as a specific amount pursuant to the 1990 Fort McDowell Indian Community Settlement Act.



**Reclamation Act of 1902 as amended and supplemented** - commonly referred to as Federal Reclamation Law. Included in this body of law and of particular importance for CAP are:

- 1) Boulder Canyon Project Act of 1928 - Public Law 70-642 - authorizes Hoover Dam and provides the Secretary authority to execute contracts for water made available under the project.
- 2) Colorado River Basin Project Act of 1968 - Public Law 90-537 - authorizes the planning, construction, and repayment of costs of the CAP and provides the Secretary authority to execute contracts for water made available under the project.

**Southern Arizona Water Rights Settlement Act of 1982 - Public Law 97-293** - authorized settlement of water rights claims of the Tohono O'Odham Nation for the San Xavier and Schuk Toak Districts. The settlement provided 37,800 af per year of CAP water to the two Districts. In addition, the settlement authorized delivery of 23,000 af per year of additional water supplies for use in the San Xavier District and 5,200 af per year of additional water supplies for use in the Schuk Toak District; however, the source of this additional 28,200 af was not identified.

**Ak-Chin Indian Community Water Rights Settlement Act of 1984 - Public Law 98-530** - provided settlement of water rights claims by the Ak-Chin Indian Community. The Community received 50,000 af per year of Colorado River water from the Yuma Mesa Division delivered by CAP in addition to CAP supplies. The Community received a supply of 75,000 acre-feet per year, and an additional 10,000 acre-feet when supplies are available.

**Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 - Public Law 100-512** - authorized settlement of water rights claims by the Salt River Pima-Maricopa Indian Community. The settlement provided 5,000 af per year of additional CAP supply and 22,000 af per year of Colorado River water from Wellton-Mohawk Irrigation and Drainage District lands to be delivered by CAP. The Act also addressed reallocation of uncontracted non-Indian agricultural water and provided authorization for the Roosevelt Water Conservation District (RWCD) to relinquish its NIA allocation.

**Fort McDowell Indian Community Water Rights Settlement Act of 1990 - Public Law 101-628** - authorized settlement of water rights claims of the Fort McDowell Indian Community (FMIC). The settlement provided that the Community receive 13,933 af per year of CAP water which the U.S. later acquired from HVID. The remaining HVID water (19,318 af per year) is reserved for Federal use in the settlement of Indian water rights claims to the Salt and Verde River watershed.

**San Carlos Apache Tribe Water Rights Settlement Act (as amended) of 1992 - Public Law 102-575** - authorized settlement of water rights claims to the Salt River watershed by the San Carlos Apache Indian Tribe. The Tribe received 33,300<sup>3</sup> af per year of CAP water formerly contracted to the Ak-Chin Indian Community as well as 3,480 af per year of M&I water previously allocated to the City of Globe, and 14,665 af per year previously allocated to Phelps Dodge Corporation.

In addition, the assignments of NIA subcontracts pursuant to the following agreements impact the availability and allocation of CAP water:

**Agreement among the United States, the CAWCD, the Hohokam Irrigation and Drainage District (HIDD), and the Arizona Cities of Chandler, Mesa, Scottsdale, and Phoenix of 1993 (HIDD Agreement)** - provides for the assignment of HIDD's CAP NIA allocation to the cities (45,835 af per year). In addition, the agreement provides the cities an option for contracting up to five percent of the NIA pool, provided that five percent of the NIA pool is available as uncontracted water.

**Agreement among the United States, GRIC, and Roosevelt Water Conservation District of 1992** - Relinquishes RWCD's CAP NIA water (18,600 af per year) to the Secretary to reserve for contracting to GRIC.

**Agreement among the United States, GRIC and RWCD of 1999** - Settles pending GRIC water rights claims against RWCD by providing up to 4,500 af per year to GRIC in addition to the NIA CAP water relinquished by RWCD

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<sup>3</sup> The delivered amount is anticipated to be 30,800 af per year, due to system losses.

to the Secretary for contracting to GRIC in 1992. The agreement includes provisions for delivery of CAP water and RWCD water to GRIC through the RWCD canal system.

## SCOPING ACTIVITIES AND ISSUES

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This section documents the purpose and objectives of scoping, as well as the scoping meetings that were held for this project, and identifies issues that were frequently raised through scoping.

### PURPOSE OF THE SCOPING PROCESS

"Scoping" is an integral part of the NEPA process. It provides *"an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action."* (40 CFR § 1501.7)

The objectives of scoping for this Federal action include the following:

- Identify significant issues related to the allocation of CAP water;
- Determine the range of alternatives to be evaluated;
- Identify environmental review and consultation requirements;
- Define the environmental analysis process and technical studies necessary to adequately address the impacts of the project;
- Identify the interested and affected public; and
- Provide information to the public regarding the project.

### SCOPING ANNOUNCEMENTS

Two notices were published in the Federal Register regarding the proposed reallocation of CAP water. The first notice (64 FR 41456), published on July 30, 1999, indicated Reclamation's intent to initiate the NEPA process to assist in developing proposed modifications to previous CAP water allocations. A second notice (64 FR 46720), published on August 26, 1999, identified Reclamation's determination that an EIS would be prepared. This second notice also included information on three public scoping meetings scheduled to be held in mid-September 1999, to obtain public input and comments related to the scoping objectives identified above. The notices are shown in Appendix A.



In addition to the Federal Register notice informing the public about the scoping meetings, notices were placed in 16 newspapers around Arizona. The notice, and list of newspapers, in which the notice was published and dates of publication, is listed in Appendix A. Reclamation's Phoenix Area Office mailed out a memorandum regarding the public scoping meetings, including an information packet on the proposed action, to 190 Federal, State and local agencies, organizations and/or interested individuals. In addition, Reclamation's Lower Colorado Regional Office issued a press release on August 26, 1999, regarding the scoping meetings, that was made available through mailings to over 400 agencies, media contacts and interested organizations.

## PUBLIC SCOPING MEETINGS

Three public meetings were held within the CAP service area of Maricopa, Pinal, and Pima Counties as part of the scoping process. The location, date, attendance, and number of oral comments received at each meeting are summarized in Table 1.

**TABLE 1**  
**Summary of Scoping Meetings**

<b>DATE</b>	<b>LOCATION</b>	<b>ATTENDANCE</b>	<b>SPEAKERS</b>
September 14, 1999	Phoenix	47	8
September 15, 1999	Casa Grande	185	25
September 16, 1999	Tucson	29	9

At each meeting, Reclamation made a short presentation prior to receiving comments. The presentation slides and handouts are included in Appendix B. Oral comments were then received, and a court reporter prepared a written record of comments made. Reclamation and Navigant Consulting, Inc. staff were available at the conclusion of each meeting for informal discussions and to answer questions.

## ISSUES RAISED THROUGH SCOPING

A number of comments were received, both in writing and orally, during the scoping process. A list of all commentors and their organizational affiliation, if any, are listed in Appendix C. A complete set of written comments that have been received and transcripts of oral comments presented at the three scoping meetings are available for review at the Phoenix Area Office.

Reclamation has reviewed and considered all the comments that have been received. Four fundamental issues were raised frequently during scoping. Within these four broad issues are several recurring themes. These issues and themes are outlined below, along with how they have been addressed by Reclamation. In response to many of the comments received, Reclamation determined that modifications to the alternatives under consideration were appropriate. This report also indicates issues and concerns raised during scoping that will be included in the impact analyses to be performed and described in the EIS.

### I. THE NEPA PROCESS

- A. *Comment:* The NEPA process is premature and should not be initiated at this time.

*Reclamation's response:* The NEPA process regarding the proposed allocation of CAP water and execution of long-term contracts was initiated by the Secretary of the Interior on July 30, 1999, with publication of a notice in the Federal Register (64 FR 41456). This was appropriate in order to meet the goals and purposes of NEPA. One of the primary purposes of NEPA, and one that has already proved beneficial to this effort, is to provide a process to encourage and facilitate public involvement in decisions, such as allocation of CAP water, which affect the quality of the human environment (40 CFR § 1500.1(d)). Absent this process, the general public would not have an opportunity to analyze the prospective action under consideration.

NEPA also requires that "environmental information is available to public officials and citizens before decisions are made and before

actions are taken." (40 CFR §1500.1(b)). While a broad range of issues is still under consideration by Reclamation in relation to the potential CAP water allocations, timely initiation of the NEPA process helps to ensure the requirements of NEPA are integrated with the planning procedures under law and agency practice so that "all such procedures run concurrently rather than consecutively." (40 CFR § 1500.2(c)) (emphasis added). Integration of the NEPA process at an appropriate early stage in developing an agency action is a hallmark of NEPA law and Reclamation practice (40 CFR §§ 1500.2(c), 1500.5(a), (f)).

Delay of the NEPA process, until some unspecified future time, would not facilitate the maximum integration of the NEPA process, nor the consideration of environmental factors and/or meaningful public input into the agency's decisionmaking regarding allocations of CAP water. The CEQ's regulations are clear that "agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." (40 CFR § 1501.2) (emphasis added). Additionally, CEQ's regulations encourage preparation of NEPA compliance documents "as close as possible to the time the agency is developing ... a proposal" so that preparation can be completed in time for the ultimate decisionmaking on the action (40 CFR § 1502.5) (emphasis added). Timely completion of the NEPA process will facilitate implementation of the proposed action or an appropriate alternative. Given the development of the proposed action and the range of other potential actions in this context, delay of the NEPA process would not be consistent with Reclamation's obligations under Federal law. CEQ's regulations specifically admonish agencies to avoid situations where the NEPA process is used to rationalize or justify decisions already made (40 CFR § 1502.5).

B. *Comment:* Only an EA is required.

*Reclamation's response:* Reclamation indicated it intended to prepare an EIS concerning proposed modifications to previous CAP water

allocation decisions with publication of a notice in the Federal Register on August 26, 1999 (64 FR 46720). This decision followed the earlier notice, which initiated the NEPA process on the proposed water allocation actions.

There are numerous reasons why Reclamation chose to prepare an EIS. Reclamation was subject to litigation previously regarding initial allocation of CAP water, which led to preparation of an EIS on water allocations in the early 1980s. Although many of the entities that would receive water under the current proposed action or action alternatives were included in studies conducted in conjunction with that EIS, conditions have changed substantially for certain aspects of the environment that could be impacted under the current proposal.

Further, Reclamation has determined that the change in use of up to 200,000 acre-feet of CAP NIA priority water, in addition to the allocation of 65,647 acre-feet of CAP M&I priority water, are significant actions requiring preparation of an EIS. Information provided by commentors during the scoping process supports this determination (see Section II at pages 2-5 through 2-7 of this report). An EA is prepared to determine whether a Finding of No Significant Impact is appropriate or whether an EIS should be prepared. Based upon the above and Reclamation's experience, we decided an EIS would be appropriate. Additionally, we felt it would be more cost effective and timely to initiate the EIS at this time.

Having decided that preparation of an EIS is the appropriate NEPA compliance document, NEPA regulations and Reclamation practice require that Reclamation provide a notice to the public of its intention to prepare an EIS (40 CFR §§ 1501.7, 1508.22). Reclamation met this requirement through the August 26, 1999 Federal Register publication.

## II. PURPOSE AND NEED FOR THE FEDERAL ACTION

- A. *Comment:* Any CAP water provided to Indian Nations/Communities should be justified.

*Reclamation's response:* Reclamation believes that providing water to Indian people is both a legitimate and critical element of the purpose and need of this Federal action. The United States has a trust responsibility to Indian people. Accordingly, Reclamation is interested in allocating a portion of the available CAP water supply to Arizona Indian Tribes to provide them with a secure source of water consistent with those Tribes' water rights claims. In providing this supply of water, Reclamation is also seeking to facilitate the settlement of outstanding Indian water right claims because they pose a significant risk to water usage by non-Indian communities in Arizona. It is important to note, however, that it is not Interior's intent that CAP water be the sole source by which water can or should be made available to settle the remaining Indian water right claims in Arizona. Instead, Interior intends to use CAP water in concert with other supplies or appropriate arrangements to assist in resolving outstanding claims.

1. *Comment:* Indian users do not have Winters' Rights to CAP water.

*Reclamation's response:* Interior's consideration of allocating a portion of the available CAP water supply is not premised or founded on claims of Tribal rights to CAP water. Rather, CAP water has been allocated to Tribes to provide a replacement supply for local water supplies for which Tribes do have reserved water rights claims based on the *Winters* doctrine, first established by the U.S. Supreme Court in 1908. In recognition of CAP water as a replacement supply, CAP contracts with Indian Tribes include a provision indicating that project water will be credited against Tribal water rights based upon terms and conditions to be agreed upon with the Secretary.

2. *Comment:* Indian users do not need or have use for the additional CAP water.

*Reclamation's response:* In addition to water rights claims, Reclamation will consider the needs and potential uses for additional CAP water as part of this process. Reclamation received comments during the scoping process that indicate none of the alternatives provide sufficient water to meet Indian Tribes'/Nations' water rights claims.

3. *Comment:* Water should only be provided to Indian Tribes/Nations as a part of settlement of water rights claims.

*Reclamation's response:* Reclamation is considering providing allocations of CAP water to Indian Tribes/Nations as a part of settlement of outstanding water rights claims. As noted above, in providing this supply of water, Reclamation is seeking to facilitate the settlement of outstanding Indian water rights claims which pose a significant risk to water usage by non-Indian communities in Arizona. Reclamation does not believe that enactment of a final settlement of water rights claims should be considered a mandatory precondition to an allocation of CAP water.

- B. *Comment:* None of the alternatives provide sufficient water to meet Indian Tribes'/Nations' water rights claims.

*Reclamation's response:* As pointed out above, Interior does not anticipate that only CAP water will be used to meet the remaining water rights claims in Arizona. Instead, Interior intends to use CAP water in concert with other supplies or appropriate arrangements to assist in resolving outstanding claims.

- C. *Comment:* Water should also be provided for environmental uses including mainstem Colorado River uses, such as the Colorado River delta in Mexico.

*Reclamation's response:* In both the proposed action and Alternative 3, CAP water could possibly be available for environmental uses within Arizona (see Section 3, Table 3). Under the proposed action or alternatives, Reclamation does not intend to allocate CAP water for environmental uses on the mainstem of the Colorado River.

### III. THE ALTERNATIVES—DEFINITION AND RANGE

A. *Comment:* The alternatives are not well defined.

1. *Comment:* Non-Indian agricultural water volumes are poorly defined

*Reclamation's response:* Reclamation has conducted comprehensive research to determine the current status of all NIA contracts and has revised the alternatives accordingly (see Section 3 and Appendix E).

2. *Comment:* Alternatives are poorly constructed.

*Reclamation's response:* Based upon the input provided during scoping and further internal discussions, we have more clearly identified what components are addressed in each of the alternatives (see Section 3 and Table 5).

B. *Comment:* Alternatives that take water away from existing contractors/ subcontractor are illegal.

1. *Comment:* Reclamation must complete the NIA reallocation process required in the Salt River Pima-Maricopa Indian Water Rights Settlement of 1988, and the Secretary of the Interior's 1992 decision.

*Reclamation's response:* Reclamation intends to comply with the provisions of the Salt River Pima-Maricopa Indian Water Rights Settlement Act of 1988 and the conditions established in the Final Reallocation Decision issued by the Secretary on February 5, 1992 (57 FR 4470). Reclamation will analyze

various scenarios regarding the allocations of currently uncontracted water classified as non-Indian agricultural priority water. Certain reallocations of CAP water remain uncommitted pursuant to the Final Reallocation Decision. Consistent with the Secretary's Decision, the EIS will analyze certain alternatives in which water that has reverted to the Secretary for discretionary use is allocated for use in facilitating Indian water rights settlements and other purposes.

2. *Comment:* Taking water away from irrigation districts holding two-party letter agreements is illegal because the districts still hold a valid CAP subcontract.

*Reclamation's response:* The United States' position with respect to the status of irrigation districts that previously entered CAP water delivery subcontracts has been presented in various documents since the effective date of those contracts (October 1, 1993). The United States does not recognize the independent validity or enforceability of the provisions of "two-party letter agreements." When a user does not contract to receive all the water available to him under his allocation, or when a user breaches a contract that provides for delivery of water, his right to contract for that water devolves upon the Secretary. The Secretary may choose to terminate the contracts of those entities that have breached the provisions of existing water delivery subcontracts. In the event of such a termination, any CAP water allocation reverts to the Secretary for discretionary use in Indian water rights settlements and other purposes. This NEPA process will analyze reallocation of water under such a circumstance.

3. *Comment:* The allocation of water previously allocated to the HVID is improper.

*Reclamation's response:* The 1990 Fort McDowell Settlement Act requires the Secretary to use any remaining water acquired from the HVID in the settlement of Indian water rights claims



in the Salt and Verde River systems. Consistent with this legislation, Interior intends to reserve the remaining 19,318 acre-feet of HVID water for allocation to the Tonto Apache, Yavapai Apache, and the GRIC as part of future settlement agreements.

4. *Comment:* The decision in the Maricopa-Stanfield Irrigation & Drainage District (MSIDD) litigation upholding the validity of the non-Indian agricultural water service subcontracts precludes alternatives under consideration.

*Reclamation's response:* Comments during the scoping period indicated some members of the public believe the 9th Circuit Court of Appeals decision in the Maricopa-Stanfield Irrigation and Drainage District v. United States litigation (No. 97-16432) validated the non-Indian agricultural water service subcontracts and, accordingly, Reclamation cannot implement any of the action alternatives identified in the August 26th Federal Register notice that affect CAP water previously allocated to non-Indian agricultural subcontractors. The United States does not share that interpretation. The general issue of the validity of non-Indian agricultural water service subcontracts was addressed by the U.S. Court of Appeals for the 9th Judicial Circuit in Section II of the court's opinion which was issued on October 14, 1998 (published at 158 F.3d 428). In that section, the court found it appropriate to consider certain issues raised by an outside party to the litigation which had questioned whether the Arizona agricultural districts which initiated the case were authorized under Federal law to do so. Under a provision of Federal law, "contractors" of CAP water were authorized to bring certain claims in Federal Court. San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, title XXXVII, § 3709(f)(1), 106 Stat. 4740 (1992). The 9th Circuit provided that:

Although Congress did not define the term 'contractor' in the SCAT Act, a reasonable

construction of the term would include all entities that had contracted for residual CAP water at the time of the Act--even those who, like the Districts, subsequently amended their contracts.

Accordingly, the United States believes the determination made by the 9th Circuit with respect to the Districts' contractual rights in 1992 is not dispositive regarding the current rights of the Districts. The United States Supreme Court upheld the decision of the 9th Circuit in May, 1999 (published at 119 S. Ct. 1802).

The United States' position is that reallocation of the water identified in the July 30th Federal Register notice (see Appendix A), under the circumstances described, is within the legal authority of the Secretary given the facts and events that have transpired subsequent to 1992. However, even if this was not the position of the United States and Interior, consideration under a NEPA process of the alternatives identified in the August 26th notice is appropriate. CEQ's NEPA regulations are clear on this point: "[A]gencies shall ... include reasonable alternatives not within the jurisdiction of the lead agency." (40 CFR § 1502.14(c)).

5. *Comment:* Why did the public scoping documents published subsequent to the August 26th notice identify New Magma Irrigation & Drainage District (NMIDD) water as available for reallocation under one of the alternatives?

*Reclamation's response:* Based on legal proceedings in Federal Court, and after consultation with the U.S. Department of Justice, Reclamation included water previously allocated to NMIDD as available for reallocation in its description of Alternative 2. The United States' position is that the approval of the debtor's plan for reorganization in the NMIDD bankruptcy proceeding (No. B-94-00211-TUC-JMM) included Federal approval of NMIDD's relinquishment of the CAP

water previously allocated and contracted to the NMIDD. This position regarding water previously allocated to NMIDD was confirmed by NMIDD in comments presented to the Bureau of Reclamation on September 15, 1999 (Trans. at p.17).

- C. *Comment:* Alternatives that reallocate CAP water without consultation with the State of Arizona are illegal pursuant to the Boulder Canyon Project Act.

*Reclamation's response:* Reclamation intends to meet the consultation requirements of applicable Federal law and believes that such consultation should take place as part of this NEPA process. The State of Arizona will be provided, along with other members of the general public, copies of NEPA compliance documents. The State of Arizona will also be afforded an appropriate opportunity to comment and consult on the allocation alternatives and the NEPA compliance documents at the appropriate stages of the NEPA process. This approach will allow Reclamation to integrate NEPA requirements with other environmental review and consultation requirements, such as those identified under the Boulder Canyon Project Act. (40 CFR § 1500.5(g)).

#### IV. SCOPE OF ENVIRONMENTAL ANALYSIS

- A. *Comment:* The EIS should evaluate the following impacts.

1. *Comment:* Impacts to groundwater levels and groundwater management in central Arizona, including the ability of entities to comply with Arizona's Groundwater Management Act.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

2. *Comment:* On-the-ground environmental impacts from taking water from non-Indian agriculture, including (but not limited to) air quality, weed control, subsidence, and abandonment of infrastructure.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

3. *Comment:* Impacts to agriculture and its viability, as a result of changing from CAP water to groundwater pumping.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

4. *Comment:* Socio-economic impacts in Pinal County from the loss of agriculture and the loss of CAP M&I conversion rights, including impacts due to the loss of the County's tax base, impacts to associated businesses, and impacts from loss of a rural lifestyle.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

5. *Comment:* Impacts from developing additional irrigated acreage on Indian lands since there are no Reclamation Reform Act (RRA) restrictions on Indian lands.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

6. *Comment:* Impacts on non-Indian agricultural districts under alternatives that lack debt and RRA relief.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

7. *Comment:* Impacts on central Arizona municipal and industrial users under alternatives where uncontracted M&I priority water is used for Federal purposes.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

8. *Comment:* Impacts to the Colorado River mainstem.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS to the degree that the point of diversion is changed and the flow regime in the mainstem is affected.

9. *Comment:* Changes regarding distribution of CAP water shortages and surpluses under the various alternatives and the associated impacts on CAP water users.

*Reclamation's response:* Such impacts will be evaluated and included in the EIS.

- B. *Comment:* The assumptions used in conducting the analyses for the EIS should assume that various named Indian water rights claims, such as White Mountain Apache claims to flows in the Salt River system, are exercised.

*Reclamation's response:* Although resolution of these Indian water rights claims could occur at some point in the future, we do not believe specific settlements are reasonably foreseeable at this time. The resulting conditions and the effects of any of the EIS alternatives on these conditions would be so speculative, that no meaningful qualification or quantification of impacts would be possible.

## INTEGRATION OF ISSUES WITH EIS

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### INCORPORATION OF ISSUES INTO THE EIS

Most of the issues raised through scoping will be integrated into the EIS through revision of the alternatives under consideration and the approach taken in analyzing impacts.

### REVISION OF ALTERNATIVES UNDER CONSIDERATION

A no-action baseline, the Proposed Action, and three additional Action Alternatives were presented in the August 26, 1999 Federal Register notice (see Appendix A) and were further described in the information packets available at the scoping meetings (see Appendix B). Reclamation received extensive comments regarding the alternatives, especially with respect to the portrayal of the NIA-priority water. As a result of the comments received and comprehensive research and analysis, Reclamation redefined the four broad categories of NIA water as shown in Table 2 for the purposes of this EIS. Comments were also received regarding the derivation of the NIA numbers. Reclamation's worksheet for developing the NIA numbers used in the current alternatives under consideration are included in Appendix E.

While the numbers describing the classes of NIA water in the alternatives have been modified, the text in Appendix B is still generally applicable, and the reader is directed there for a narrative description of the alternatives. Figures 3 through 7 describe the alternatives as modified through the scoping process. In addition, Figure 8 summarizes additional CAP water made available to the various Indian Communities/Nations in each alternative.

As noted previously, the Proposed Action is the subject of current negotiations and, as such, may evolve while the EIS is still under preparation. Several important aspects of the Proposed Action that were not included in the public meetings are described in Table 3. It is important to note, however, that while

**TABLE 2**

**SUMMARY OF MODIFICATIONS TO NON-INDIAN AGRICULTURE CATEGORY<sup>1</sup>**

	<b>RELINQUISHED OR DECLINED</b>	<b>CITIES' ALLOCATIONS AND OPTION</b>	<b>LETTER AGREEMENTS</b>	<b>UNCONTRACTED</b>
<b>Pre-Scoping</b>	<b>44,493 afa</b> Queen Creek ID Chandler Heights Citrus ID San Tan ID Tonopah ID New Magma IDD ( '95 bankruptcy)	<b>43,654 afa</b> Cities of Chandler, Mesa, Phoenix and Scottsdale assigned HIDD allocation and option of 5% of NIA pool	<b>140,373 afa</b> Maricopa-Stanfield IDD Central Arizona IDD	<b>112,578 afa</b> <u>1992 NIA reallocation water</u> Maricopa-Stanfield IDD Central Arizona IDD New Magma IDD Chandler Heights Citrus ID San Carlos IDD Roosevelt ID ASLD Leases McMullen Valley WCD FICO
<b>Total = 341,098 af</b>				
<b>Modification</b>	<b>Volume of pool reduced</b> <u>Decreased by:</u> Queen Creek ID Chandler Heights Citrus ID San Tan ID Tonopah ID <u>Increased by:</u> ASLD Leases McMullen Valley WCD FICO	<b>Volume increased</b> Calculation of HIDD and 5% option based on interpretation of 1993 HIDD Agreement see Appendix E	<b>Volume of pool increased</b> <u>Increased by:</u> Chandler Heights Citrus ID Queen Creek ID San Tan ID Tonopah ID	<b>Volume of pool reduced</b> <u>Decreased by:</u> ASLD Leases McMullen Valley WCD FICO
<b>Post-Scoping</b>	<b>38,999 afa</b> New Magma IDD ( '95 bankruptcy) ASLD Leases McMullen Valley WCD FICO	<b>45,835 afa</b> Cities of Chandler, Mesa, Phoenix and Scottsdale assigned HIDD allocation and option of 5% of NIA pool	<b>184,449 afa</b> Central Arizona IDD Maricopa-Stanfield IDD Chandler Heights Citrus ID Queen Creek ID San Tan ID Tonopah ID	<b>71,815 afa</b> <u>1992 NIA reallocation water</u> Maricopa-Stanfield IDD Central Arizona IDD New Magma IDD Chandler Heights Citrus ID San Carlos IDD Roosevelt ID
<b>Total = 341,098 af</b>				

<sup>1</sup> It should be noted that the allocation numbers have been refined compared to the numbers provided in the scoping materials; see Appendix E.

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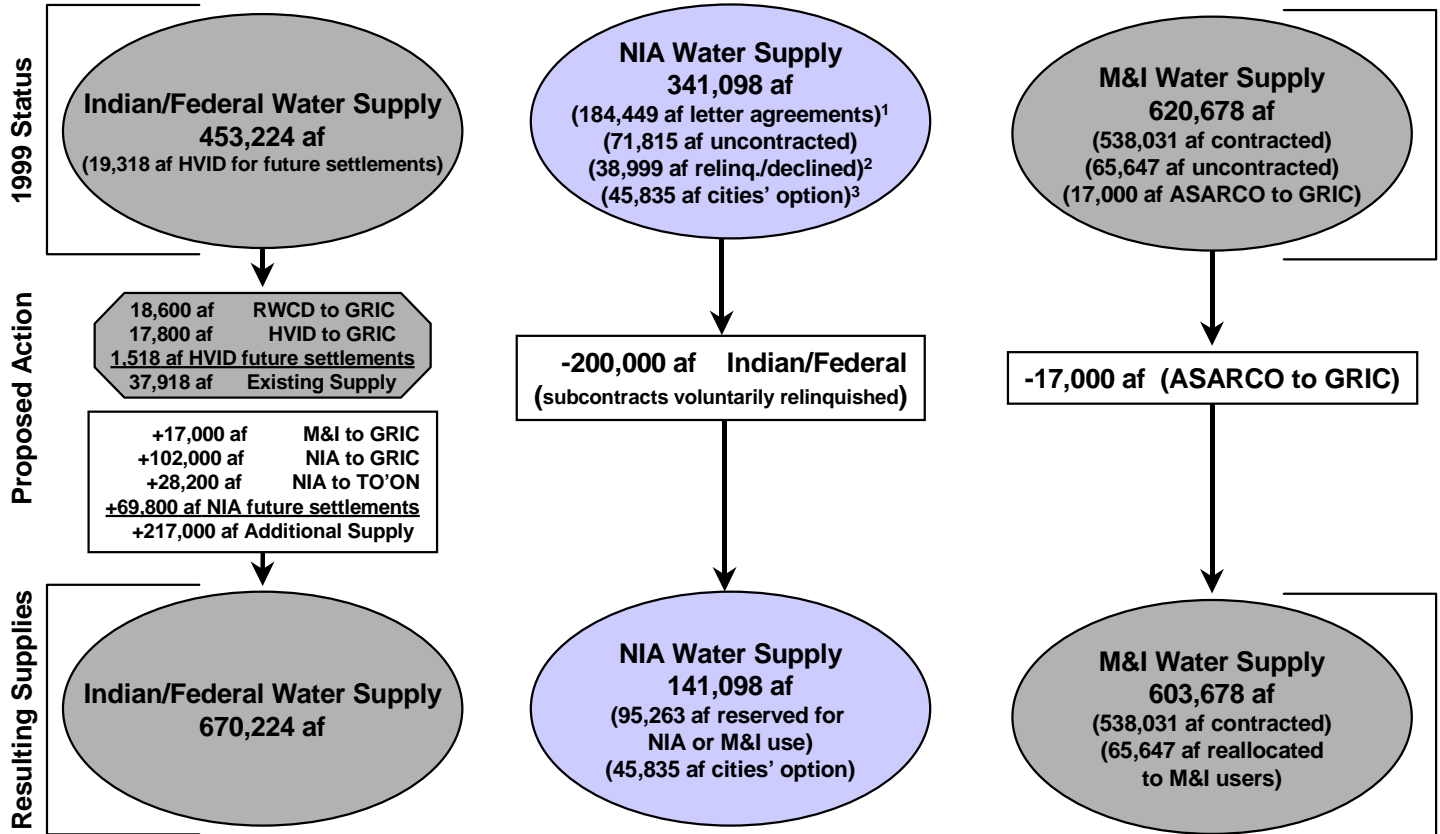
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**FIGURE 3**  
**PROPOSED ACTION ALTERNATIVE**  
**Distribution of CAP Water Supplies**



<sup>1</sup>Six irrigation districts (Central Arizona IDD, Maricopa-Stanfield IDD, Queen Creek ID, Chandler Heights Citrus ID, San Tan ID, and Tonopah ID) are considered to have relinquished their allotments subject to SOI consent.

<sup>2</sup>NMIDD is considered to have relinquished its 1983 allocation. FICO, MVWCD, and ASLD are considered to have declined their rights to the 1992 NIA reallocation.

<sup>3</sup>Pursuant to 1993 HIDD Agreement.



SECTION 3  
INTEGRATION OF ISSUES WITH EIS

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November 17, 1999

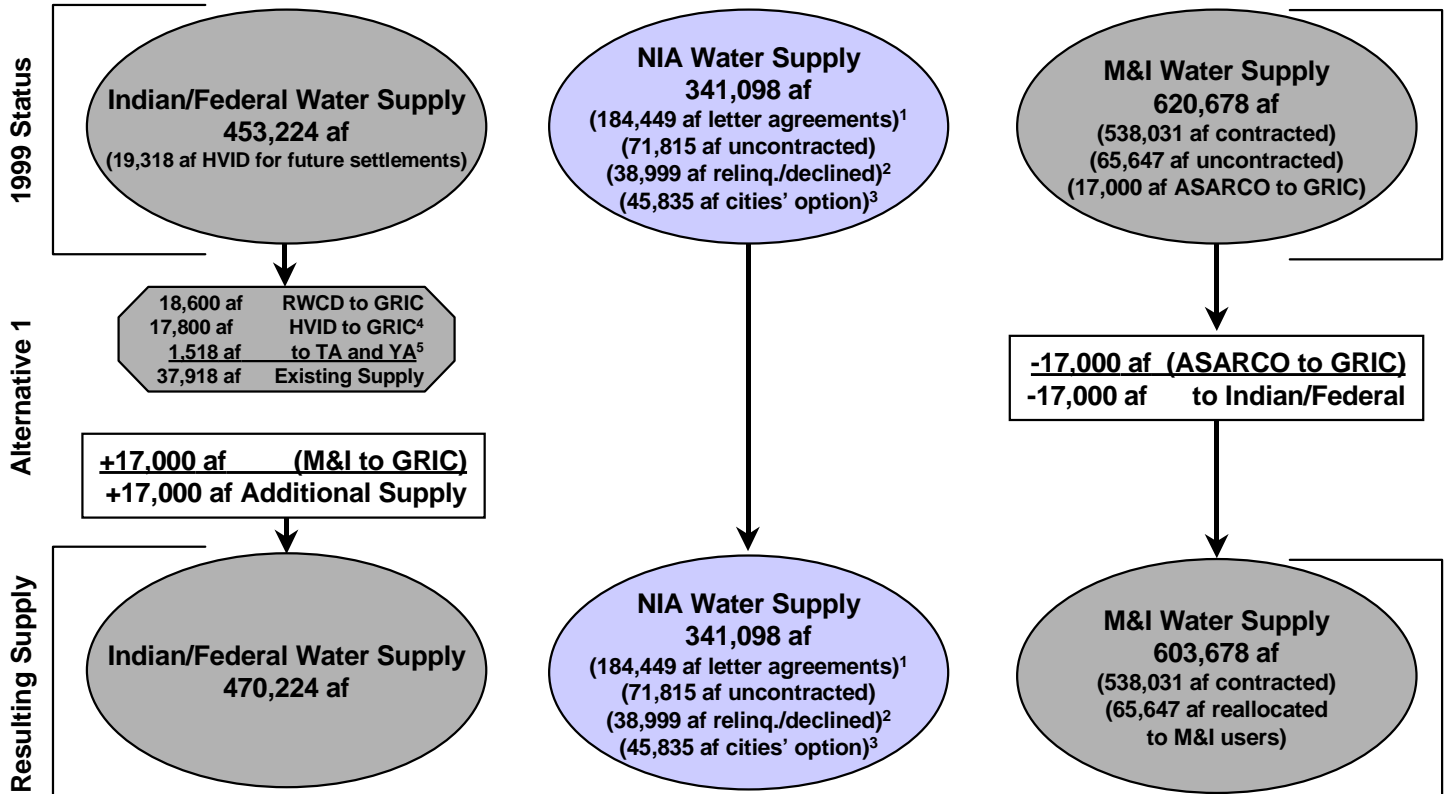
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**FIGURE 4  
ALTERNATIVE 1**

**Distribution of CAP Water Supplies**



<sup>1</sup>Six irrigation districts (Central Arizona IDD, Maricopa-Stanfield IDD, Queen Creek ID, Chandler Heights Citrus ID, San Tan ID, and Tonopah ID) are considered to have relinquished their allotments subject to SOI consent.

<sup>2</sup>NMIDD is considered to have relinquished its 1983 allocation. FICO, MVWCD, and ASLD are considered to have declined their rights to the 1992 NIA reallocation.

<sup>3</sup>Pursuant to 1993 HIDD Agreement.

<sup>4</sup>Consistent with FMIC Water Rights Settlement Act provisions.

<sup>5</sup>Tonto Apache and Yavapai Apache Tribes, consistent with FMIC Water Rights Settlement Act provisions.

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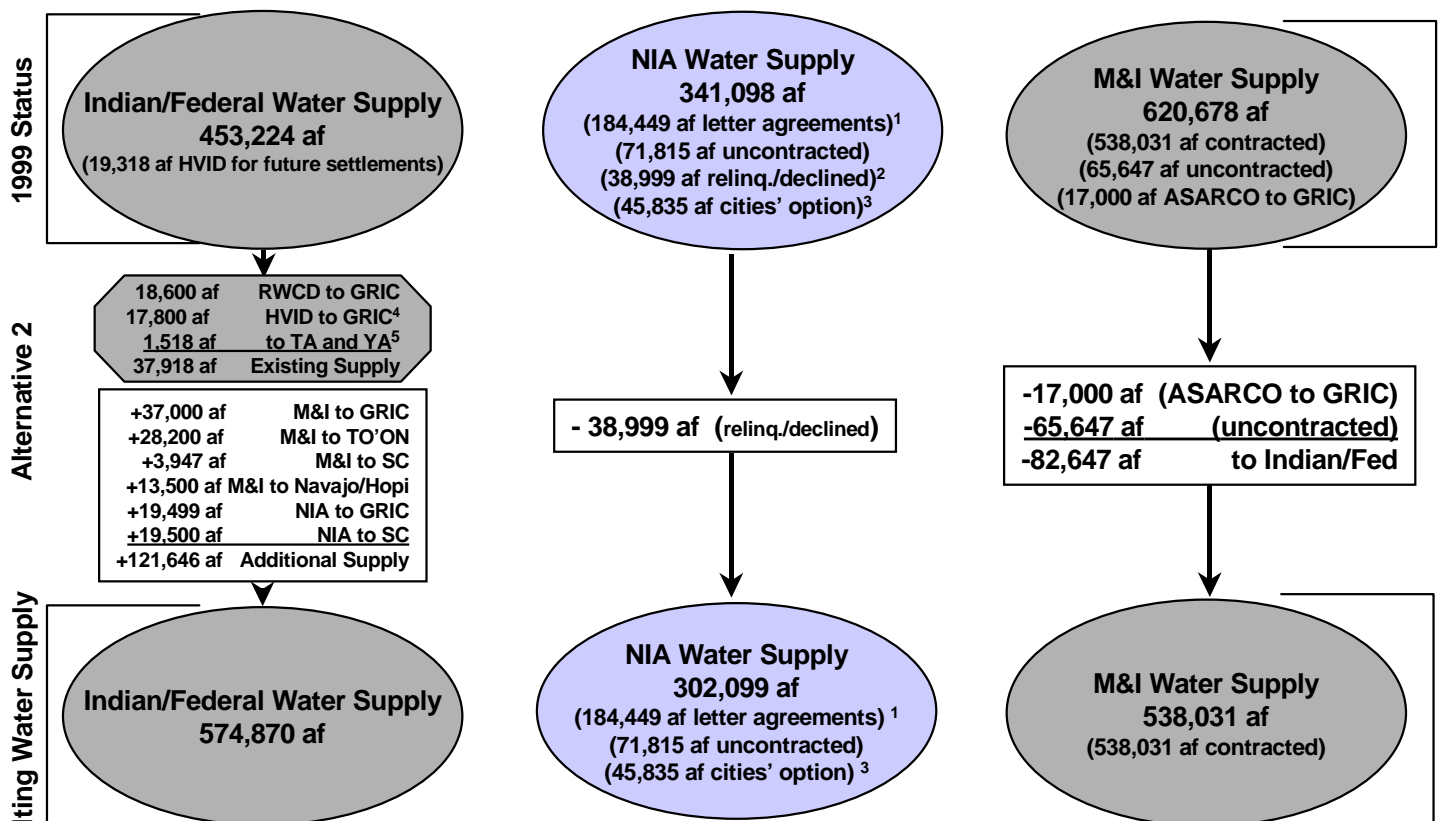
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**FIGURE 5  
ALTERNATIVE 2**

**Distribution of CAP Water Supplies**



<sup>1</sup>Six irrigation districts (CAIDD, MSIDD, Queen Creek ID, Chandler Heights Citrus ID, San Tan ID, and Tonopah ID) are considered to have relinquished their allotments subject to SOI consent.

<sup>2</sup>NMIDD is considered to have relinquished its 1983 allocation. FICO, MVWCD, and ASLD are considered to have declined their rights to the 1992 NIA reallocation.

<sup>3</sup>Pursuant to 1993 HIDD Agreement.

<sup>4</sup>Consistent with FMIC Water Rights Settlement Act provisions.

<sup>5</sup>Tonto Apache and Yavapai Apache Tribes, consistent with FMIC Water Rights Settlement Act provisions.

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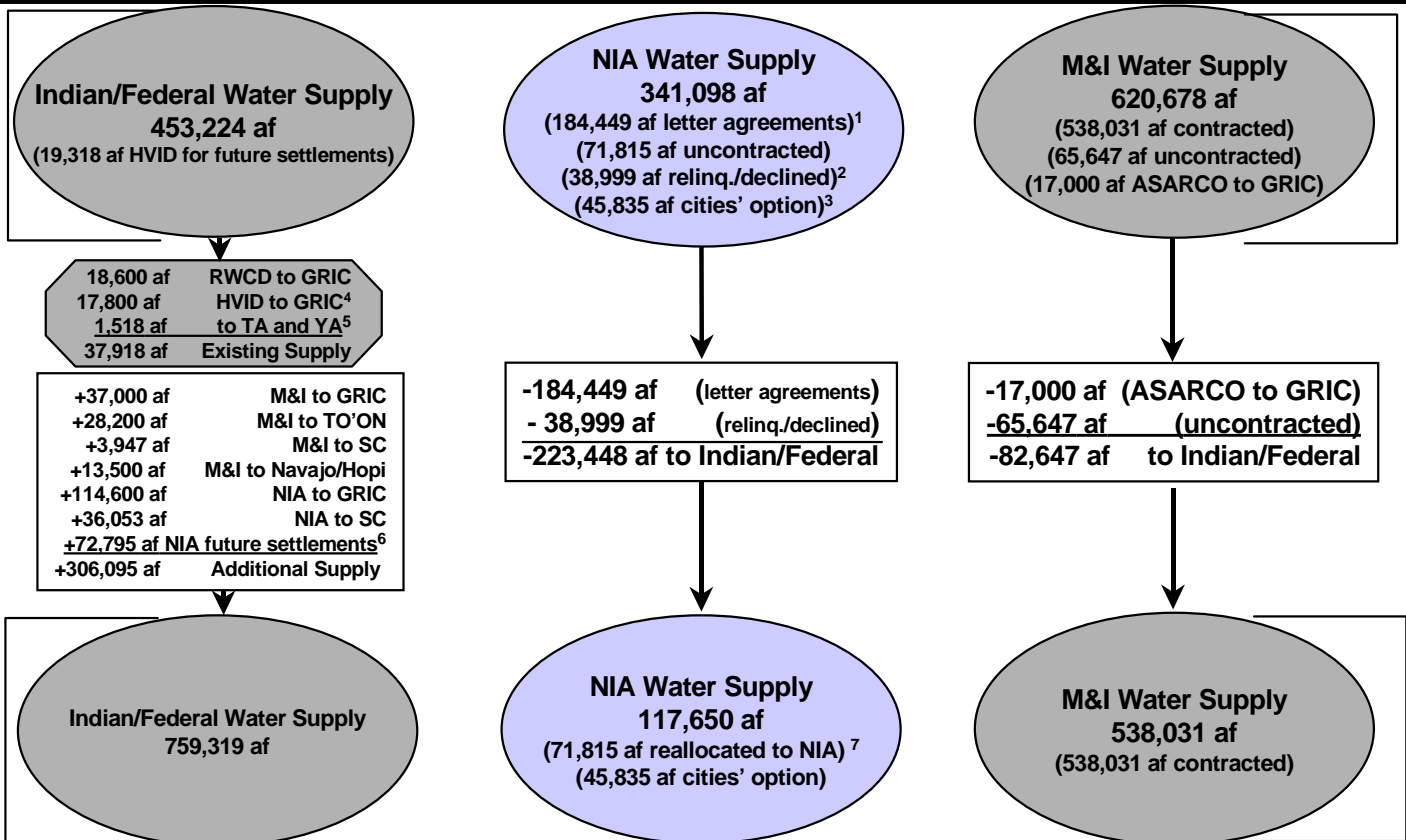
**FIGURE 6  
ALTERNATIVE 3**

**Distribution of CAP Water Supplies**

1999 Status

Alternative 3

Resulting Supply



<sup>1</sup>Six irrigation districts (CAIDD, MSIDD, Queen Creek ID, Chandler Heights Citrus ID, San Tan ID, and Tonopah ID) are considered to have relinquished their allotments subject to SOI consent.

<sup>2</sup>NMIDD is considered to have relinquished its 1983 allocation. FICO, MWCD, and ASLD are considered to have declined their rights to the 1992 NIA reallocation.

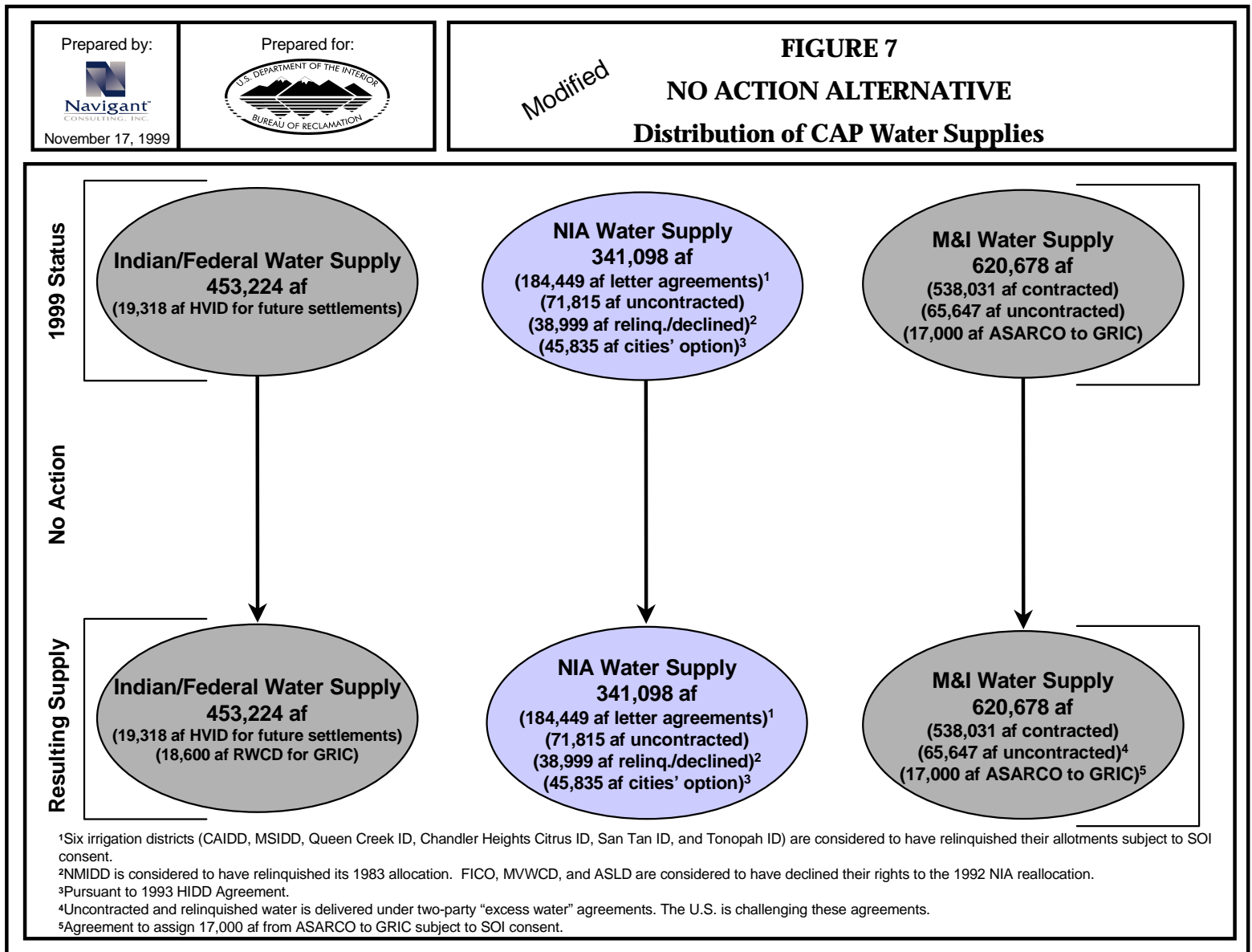
<sup>3</sup>Pursuant to 1993 HIDD Agreement.

<sup>4</sup>Consistent with FMIC Water Rights Settlement Act provisions.

<sup>5</sup>Tonto Apache and Yavapai Apache Tribes, consistent with FMIC Water Rights Settlement Act provisions.

<sup>6</sup>Includes possible environmental uses.

<sup>7</sup>Two outcomes of reallocation will be evaluated in the EIS: reallocation to NIA use, and reallocation to M&I uses.



**SECTION 3**  
**INTEGRATION OF ISSUES WITH EIS**

Prepared by:



November 17, 1999

Prepared for:



*Modified*

**FIGURE 8**

**CAP SUPPLIES FOR INDIAN COMMUNITIES/NATIONS**  
**Summary for Modified Alternatives (all quantities in af per year)**

INDIAN COMMUNITY OR NATION	1983 ROD	CURRENT NO ACTION	CAP WATER SUPPLY UNDER ALTERNATIVE			
			PROPOSED ACTION	ALT. 1	ALT. 2	ALT. 3
Gila River	173,100	173,100	328,500	226,500	265,999 <sup>7</sup>	361,100 <sup>7</sup>
Tohono O'odham <sup>2</sup>	45,800	45,800 <sup>3</sup>	74,000 <sup>6</sup>	45,800	74,000 <sup>6</sup>	74,000 <sup>6</sup>
San Carlos Apache	12,700	61,645 <sup>4</sup>	61,645	61,645	85,092	101,645
Navajo/Hopi	0	0	0	0	13,500	13,500
Yavapai and Tonto Apache	1,328	1,328	1,328	2,846 <sup>7</sup>	2,846 <sup>7</sup>	2,846 <sup>7</sup>
Others <sup>1</sup>	76,900	133,433	133,433	133,433	133,433	133,433
Reserved for Future Settlements	0	37,918 <sup>5</sup>	71,318	0 <sup>8</sup>	0 <sup>8</sup>	72,795
<b>Total Indian CAP Supply</b>	<b>309,828</b>	<b>453,224</b>	<b>670,224</b>	<b>470,224</b>	<b>574,870</b>	<b>759,319</b>

<sup>1</sup> Includes Ak Chin, Fort McDowell, Pascua Yaqui, Salt River, and Yavapai Prescott Indian Communities.

<sup>2</sup> Includes 8,000 afa for Chui Chu District

<sup>3</sup> In addition to the 45,800 afa of CAP allocated to the Nation, the Nation is entitled to another 28,200 afa per SAWRSA, the source of which was not identified in SAWRSA.

<sup>4</sup> Subject to implementation of the San Carlos Apache Tribe Water Settlement Act of 1992.

<sup>5</sup> Includes water authorized by FMIC Water Rights Settlement Act (19,318 af of HVID water) and RWCD assignment (18,600 af).

<sup>6</sup> Under the Proposed Action and Alternatives 2 and 3, the 28,200 afa of additional water to the Nation per SAWRSA is identified as a CAP allocation.

<sup>7</sup> Consistent with FMIC Water Rights Settlement Act provisions (HVID water).

<sup>8</sup> Water currently reserved for future settlements would be allocated to Indian Communities/Nations in Alternatives 1 and 2.

**TABLE 3**  
**CAP ALLOCATION EIS**  
**SUMMARY OF ALTERNATIVES**

<i>Blocks of Water</i>	<i>Users</i>	Proposed Action (Settlement)	Alternative 1 -----	Alternative 2 (NO SETTLEMENT)	Alternative 3	No Action -----
M&I 65k Uncontracted	M&I	X	X			--
	Federal-Indians			X	X	
NIA 39k Relinq. or Declined	NIA	1	--			--
	Federal-Indians	1		X	X	
NIA 184k Letter Agreement	NIA	1	--	--		--
	Federal-Indians	1			X	
NIA 72k Uncontracted	NIA	1	--	--	X <sup>2</sup>	--
	M&I	1			X <sup>3</sup>	
<b><i>Other Components in Alternatives<sup>4</sup></i></b>						
Water for Environmental Purposes <sup>5</sup>		X <sup>6</sup>			X <sup>7</sup>	
Water for Indian Uses		X	X	X	X	
Leases of Indian Water to M&I Users		X				
Final Indian Water Rights Settlement		X				
Reclamation 9d Debt Relief for NIA		X				
Firming of NIA to M&I Priority for Indian Users		X <sup>8</sup>				
RRA Relief for NIA		X				
Extended Availability of NIA Pool <sup>9</sup>		X				
Resolution of CAP Shortage Administration		X				
Conversion of NIA Percentage to Volume		X <sup>10</sup>				

**Notes**

- (1) Under the Proposed Action, all NIA water is voluntarily relinquished. Of the total 297k NIA water, 200k is reserved for Federal purposes and 97k is reserved for non-Indian use.
- (2) One scenario evaluated under Alternative 3 is contracts offered to, accepted, and used by NIA.
- (3) The other scenario evaluated under Alternative 3 is contracts offered to and declined by NIA, with subsequent offer to and use by M&I.
- (4) If marked, alternative includes a degree, but not necessarily all, of the component. For example, 9d debt and RRA relief are under negotiation.
- (5) Water for environmental purposes would be for in-state use only and would not be used on the Colorado River System.
- (6) Under the Proposed Action, water for environmental purposes could be available on an annual basis as excess water.
- (7) Alternative 3 contains a block of water reserved for Federal purposes, primarily for Indian uses and possibly environmental purposes.
- (8) Firming of some NIA to M&I priority for Indian use.
- (9) NIA Pool is excess water, pool extension is based on availability and CAWCD extending the ag pool pricing program.
- (10) As a result, a new method for distributing surplus will be established.

current negotiations include some form of Reclamation 9d debt relief, RRA relief, and an extension of CAWCD agricultural pool pricing for the NIA sector, the extent of these provisions may not be completely defined until settlement is reached.

For the Proposed Action, all allocations of NIA-priority water would be converted to fixed volumes. Contracts based on percentages would be voluntarily relinquished, and a new methodology for distribution would be established. However, in the absence of settlement, it is contemplated that contracts and subcontracts for NIA priority water would be offered on a percentage basis. For ease in comparing the alternatives in the EIS, the NIA allocations for the non-settlement alternatives have also been converted to volumes based on a normal year CAP delivery of 1,415,000 acre-feet (which is consistent with the volumes developed in the Proposed Action).

For all alternatives except the Proposed Action, the water which originated in the NIA category will keep its status with regard to surplus conditions. For example, in Alternative 3, a quantity of NIA water is transferred to the GRIC. The GRIC would then be entitled to whatever surplus water is associated with that portion of the NIA pool. The GRIC would also be liable to incur the shortages associated with the portion of its supply. The treatment of NIA water during shortage conditions would be the same for all alternatives including the No Action alternative. The treatment of NIA water during surplus conditions under the Proposed Action is subject to settlement negotiations; the resolution of this issue will be treated in the EIS accordingly.

## GENERAL APPROACH TO ANALYSIS OF IMPACTS

The process for analyzing the environmental impacts will involve identifying and estimating certain background assumptions (related to water availability and pricing), describing the anticipated water use by sector, and then evaluating the impacts (for the action alternatives) or estimating the changes in conditions (for the no-action alternative) over the period of analysis (Figure 9). Where possible, impacts will be quantified; where not, they will be noted and discussed in the EIS text. The evaluation will be at the entity level.





The analysis will focus on deliveries and uses carried forward 50 years (i.e., the timeframe for the EIS will be 2001 to 2051). This is consistent with the water contracting period provided for in the CAP authorizing legislation and the period of analysis for the original EIS. In addition, the impacts of CAP shortages and surpluses will be evaluated. Projected changes over the period of analysis in the no-action alternative will provide a baseline against which impacts in the action alternatives will be measured.

Fundamental to the evaluation of potential impacts is an understanding of policies of CAWCD and Reclamation regarding operation of the CAP, pricing of CAP water, and development schedules for Indian and M&I users. Assumptions regarding these areas will be made for each alternative. These assumptions will serve to frame the availability and conditions for distribution of CAP water to the Indian, M&I, NIA and excess water classes. The distribution of water among the water classes can then be used to determine the CAP water available to each entity for use. Assumptions will be prepared based on existing laws, agreements, available information and discussions with representatives of appropriate institutions and entities.

The expected conditions/anticipated water use will be described on an entity-by-entity basis for the Indian Communities or Nations, irrigation districts, and M&I entities that may be offered a contract for CAP water through one of the alternatives. The description will be based on the development of a water budget that includes physical hydrologic parameters as well as water supply and groundwater withdrawal components within each entity's boundaries. Changes to the water budget over the project time frame will be calculated and analyzed.

Environmental impacts will be quantified or described based on changes from baseline conditions projected for the 50-year analysis period. It is anticipated that the analyses of environmental impacts will be focused on the following areas in addition to the impacts outlined by NEPA:

- Groundwater levels;
- Groundwater quality;
- Surface water resources including effluent-dominated streams;
- Air quality;
- Socioeconomic impacts including primary and secondary economic impacts to NIA areas;

- Impacts to biological and archeological resources; and
- Impacts due to non-resolution of water rights issues and uncertainties.

## SCHEDULE FOR NEPA PROCESS MOVING FORWARD

Reclamation is proceeding to conduct the technical studies necessary to complete its analyses for the proposed action and alternatives, as revised as a result of the scoping process and described herein. We currently anticipate a draft EIS will be available for a 60-day public review and comment period during Summer 2000. A notice indicating the draft EIS' availability will be mailed to everyone on the mailing list and will be published in local newspapers.

To be placed on the mailing list for subsequent information, please write or telephone Ms. Janice Kjesbo, Environmental Resource Management Division, Phoenix Area Office, P.O. Box 81169, Phoenix, Arizona 85069-1169, telephone (602) 216-3864, or fax (602) 216-4006.

The draft EIS will be available on the internet at <http://www.apo.lc.usbr.gov/> and it can also be obtained by request. At this time, we anticipate three public hearings will be held to receive comments on the draft EIS.